

§ 58-92-15. Test method and performance standard.

(a) Except as provided in subsection (o) of this section, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the Commissioner in accordance with G.S. 58-92-20, and the cigarettes have been marked in accordance with G.S. 58-92-25.

(b) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(c) Testing shall be conducted on 10 layers of filter paper.

(d) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(e) The performance standard required by this section shall only be applied to a complete test trial.

(f) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (IOS) or other comparable accreditation standard required by the Commissioner.

(g) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(h) This section does not require additional testing if cigarettes are tested consistent with this Article for any other purpose.

(i) Testing performed or sponsored by the Commissioner to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(j) Each cigarette listed in a certification submitted pursuant to G.S. 58-92-20 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(k) A manufacturer of a cigarette that the Commissioner determines cannot be tested in accordance with the test method prescribed in subsection (b) of this section shall propose a test method and performance standard for the cigarette to the Commissioner. Upon approval of the proposed test method and a determination by the Commissioner that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (d) of this section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to G.S. 58-92-20. If the Commissioner determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this Article, and the Commissioner finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire-safety standards of that state's law or regulation under a legal provision comparable to this section, then the Commissioner shall

authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the Commissioner demonstrates a reasonable basis why the alternative test should not be accepted under this Article. All other applicable requirements of this section shall apply to the manufacturer.

(l) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the Commissioner and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make such copies available.

(m) The Commissioner may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in subsection (d) of this section.

(n) The Commissioner shall review the effectiveness of this section and report every three years to the General Assembly the Commissioner's findings, and if appropriate, recommendations for legislation to improve the effectiveness of this Article. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(o) The requirements of subsections (a) through (i) of this section shall not prohibit:

(1) Distributors or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the distributor or retail dealer can establish that all taxes owed on the cigarettes pursuant to Article 2A of Chapter 105 of the General Statutes have been paid prior to January 1, 2010, and the distributor or retail dealer can establish that the inventory was purchased prior to January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year.

(2) The sale of cigarettes solely for the purpose of consumer testing.

(p) The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes, as it read on August 24, 2007.

(q) No local government may pass any ordinance changing the performance standard set forth in this section. (2007-451, s. 1; 2009-490, s. 1.)